

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1257 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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PALLAVI JEYKISHAN FAMILY TRUST

Versus

STATE OF GUJARAT

Appearance:

MR RN SHAH for Petitioner

Ms.Siddhi Talati,

Assistant GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 3, 4

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 04/04/2000

ORAL JUDGEMENT

1. This petition is filed by the petitioner for
quashing and setting aside an order dated December 2,
1988, Exhibit 'F' to the petition passed by the

Additional Chief Secretary (Appeals) (Revenue Department), State of Gujarat, and to restore the order passed at Exhibit 'A' by the Taluka Development Officer of Halol Taluka Panchayat dated March 5, 1982.

2. The case of the petitioner was that respondent No.2-Taluka Development Officer granted permission to use land for non-agricultural purposes in accordance with Section 65 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the Code"). The said action was clearly legal, valid and in accordance with law. However, in exercise of suo motu revisional powers under Section 211 of the Code, a notice came to be issued on 23rd of June, 1986 as to why the order passed on 5th of March, 1982 by the Taluka Development Officer should not be cancelled. It was, inter alia, stated in the said notice that the Taluka Development Officer had no power, authority or jurisdiction to grant permission for use of land for non-agricultural purposes under Section 65 of the Code and hence, the order passed by the Taluka Development Officer, granting permission under Section 65 was without authority of law.

3. A reply to the show cause notice was filed by the petitioners, inter alia, contending that the notice was issued by the Government after long period and revisional powers must be exercised within reasonable time. On merits also, the action of the Taluka Development Officer was legal and valid.

4. The Additional Chief Secretary set aside the order passed by the Taluka Development Officer on 5th of March, 1982 holding that he had no power to grant N.A. permission under Section 65 of the Code. The said order is challenged by the petitioner in the present petition.

5. Rule was issued and interim relief was granted. The petition was ordered to be heard along with Special Civil Application No.1651 of 1987 and allied matters.

6. At the time of hearing of the petition, Mr.R.N. Shah, learned counsel for the petitioner submitted that the cognate matters, viz., Special Civil Application No.1651 of 1987 and companion matters, came up for hearing before a Single Judge of this Court and by a common judgment and order dated 16th January, 1995, all those petitions were allowed and the orders passed by the State Government were

of the judgment, my learned Brother B.C. Patel, J., observed as under :-

"... 5. In the result, these petitions are allowed. Impugned orders at Annexure 'A' to each of the petitions are quashed and set aside and the order passed by the Taluka Development Officer, Halol granting permission for non-agricultural use under section 65 of the Bombay Land Revenue Code in each of the matter is restored.

Rule made absolute accordingly with cost "

7. Mr.Shah also drew my attention to an identical question raised in Special Civil Application Nos. 5824 and 5825 of 1987 decided by me on April 23, 1991. Almost in similar circumstances, I have held that the order passed by the State Government was liable to be quashed on two grounds.

Firstly, permission for non-agricultural use was granted by the Taluka Development Officer on 5th of March, 1982 and suo motu revisional powers were sought to be exercised by issuing notice in 1986. Exercise of power after about four years could not be said to be within reasonable period and reliance was placed upon a judgment of the Hon'ble Supreme Court in State of Gujarat v. Patel Raghav Natha, reported in AIR 1969 SC 1269. The said contention was upheld and I had observed that the power exercised by the State Government in the facts and circumstances could not be said to be exercised within reasonable period and the order of the State Government was, therefore, liable to be set aside.

Secondly, the Competent Authority to grant permission for non-agricultural use of land under Section 65 of the Code was Taluka Development Officer and the point was finally concluded in Yash Kamal Builders v. State of Gujarat and others, 1989(1) GLH 177. Therefore, even on merits, the State Government was not right in holding that T.D.O. had no power, authority or jurisdiction to grant such permission. It was only T.D.O., who had power, authority and jurisdiction to grant such permission. Grant of permission by T.D.O. was, therefore, in accordance with law.

8. Both the grounds are available to the petitioners in this case also and the petition deserves to be allowed.

9. For the foregoing reasons, in my opinion, the

petition deserves to be allowed and is accordingly allowed. The order passed by the State Government at Exhibit 'F', dated December 2, 1988 is quashed and set aside and the order passed by the Taluka Development Officer, Halol at Exhibit 'A', granting permission for non-agricultural use under Section 65 of the Code is hereby restored. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

4th April, 2000 (C.K. Thakkar, J.)

(apj)